IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Civil Application No. 4531/2007
IN
First Appeal No. 444/2006
Smt. Savitribai wd/o Diwanchand Bhutani and others vs. Mrs. Krishnakumari wd/o Ruplal Bhutani and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE : 17.8.2007

Heard Mr. S. Dewani, learned counsel for the appellants and Shri R.L. Khapre, learned counsel for the respondents.

2. By this application purporting to be under order XXXIX Rule 1 and 2 read with Section 94 and 151 and oder 38 Rule 5 of the Code of Civil Procedure the respondents seek injunction against the appellants from selling several properties annexed to the application and in alternative a direction against the appellants to furnish security in the sum of Rs. 1.75 crore.

3. The appellants have filed the above appeal against the judgment and decree dated 13th April,

2006 passed by the IInd Joint Civil Judge, Sr. Dn., Nagpur in Regular Civil suit No. 54/74 thereby making the award passed by the arbitrator Rule of the court. By the judgment and decree the appellants who are defendants in the said suit have been directed to pay jointly and severally the sum of Rs. 50,22,486/- along with interest thereon which comes to about Rs. 1.15 crore. This court by order dated 7.9.2006 granted stay to the execution of the decree dated 13.4.2006. Thereafter, this Court by order dated 12.6.2007 disposed of Civil Application No. 8223/06 filed by the respondent restraining the appellants from transferring two flats till disposal of the appeal. It is the case of the respondents that the decretal amount is over Rs. 1 crore and the order passed in C.A. No. 8223/06 does not protect the interest of the respondents in the event the appeal filed by the appellants/defendants is dismissed.

4. Mr. Khapre, the learned counsel for the respondents at the outset submitted that although the respondents claimed relief in respect of several properties interest of justice would be served in case the order is passed in respect of the property mentioned at sr.no. 1of the chart i.e. property

situated at Bhilai G.E.Road, Power house Bhilai admeasuring about 37,500 sq. ft., the value of which is over Rs. 2 crores as disclosed in valuation report. According to Mr. Khapre, it is necessary to protect the interest of the respondents in the event of dismissal of the appeal filed by the appellants inasmuch as the decree passed against the appellants is money decree. In support of his submission, Mr. Khapre has relied upon several authorities. We do not deem it necessary to refer to the said authorities in view of the order which we propose to pass. Mr. Dewani, the learned counsel appearing for the appellants submitted that considering the fact that the decree passed by the trial court is a nullity this court granted unconditional stay of the decree and, therefore, no case is made out by the respondents for attachment of the several properties and/or for grant of security.

5. We have considered the submissions made by the learned counsel for the parties and perused the records. The decree passed against the appellants is a money decree and the amount payable in terms of the decree comes to over a crore of rupees. The interim order dated 12.6.2007

passed in C.A. No. 8223/06 passed by this Court disposing of the civil application does not fully protect the interest of the respondents. Therefore, it would be just and proper if the appellants are restrained from disposing of the above property mentioned till disposal of the appeal since the value of the said property is over Rs. 2 crore.

6. In the result, therefore, the application is partly allowed. The appellants are restrained from disposing of the property viz. land and building having an area of 37,500 sq. ft. situated at Bhilai G.E.Road Power House Bhilai till disposal of First Appeal No. 444/2006. The relief in respect of the other properties is rejected.

The application is disposed of in the aforesaid terms.

Judge **Judge**

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